

Internal Revenue Service

Department of the Treasury

Washington, DC 20224

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Date July 2, 1997

Person to Contact: [REDACTED]

Telephone Number: [REDACTED]

Refer Reply to: [REDACTED]

Date:

MAY 23 1997

Employer Identification Number: [REDACTED]  
Key District: [REDACTED]

Dear Applicant:

We have considered your application for recognition of exemption from federal income tax as an organization described in section 501(c)(4) of the Internal Revenue Code. For the reasons stated below, we conclude that you do not qualify for tax exemption under this section. Your protest rights are also explained below.

You were incorporated under the laws of the State of [REDACTED] on September 1, 1995. Article IV of your incorporating instrument states that you have been formed to promote and develop the common good and social welfare of residents of [REDACTED]

Article IV also provides that you shall have the power to lay out, build, and maintain public streets and roads within the subdivision to own, lease, and operate recreational and eating facilities for the benefit and use of the residents, and to acquire, maintain, and operate a private airstrip for the use of your members. This Article also states that you are not organized or operated for profit.

Article V of your incorporating instrument states in section 1 that every person or entity who is the owner of a fee or of the equitable title in a lot (at [REDACTED]) shall be a member of the Corporation. Under Section 2, members shall have one vote for each lot in which they hold the interest required for membership per Section 1.

Bylaws, Article III sets forth three purposes, as follows:

- A. To promote, develop and maintain the common property of the association.
- B. To promote and encourage aviation, social and recreational activities of the community.
- C. To foster, promote and engage in aviation education.

[REDACTED]

Bylaws, Article V provides that nonmembers who [REDACTED] shall be assessed a fee by the Board of Directors for use of the facilities.

In an undated letter received in the Cincinnati District Office on January 21, 1997, and responsive to a development letter from that office, you have furnished the following information:

You use your funds, all derived from your membership, to maintain the Association property, consisting of an airstrip and road, both of which abut members' property. They are shown on a map which you have submitted. This community property is open to the public. As illustration, the [REDACTED]

Further, you inform us that, "At present, there are six residences under construction in the subdivision. There are twelve landowners and there is no set yearly assessment. Each owner contributes equally when the need arises."

In a subsequent letter, received in the Cincinnati District on February 14, 1997, and responsive to a follow-up letter from that office, you advise that the airstrip does not connect to any airport. Also, it is not listed on any air charts. Accordingly, "it is used by the homeowners and their friends about 90% of the time. Community organizations such as the Air National Guard or Civil Air Patrol may use it for specified operations with permission, or it might be used by any pilot in an emergency."

Concerning social or recreational activities, you respond that,

The organization will have occasional picnics or covered dish dinners, usually in conjunction with a meeting of the homeowners association. There are no regularly scheduled activities and no plans for any use of the association's money to be spent for these activities. In the past, food has been provided by the individuals.

Section 501(c)(4) of the Code provides for the exemption from federal income tax of civic leagues or organizations not organized for profit but operated exclusively for the promotion of social welfare, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

Section 1.501(c)(4) - 1(a)(2)(i) of the Income Tax Regulations provides that an organization is operated exclusively for the promotion of social welfare if it is primarily engaged in promoting in some way the common good and general welfare of the people of the community. Such an organization is one which is operated primarily for the purpose of bringing about civic betterments and social improvements.

In Rev. Rul. 74-99, 1974-1 C.B. 131, the Service described the circumstances under which a homeowners' association may qualify for exemption under section 501(c)(4) of the Code. The Rev. Rul. requires that a homeowners' association desiring to qualify for exemption under section 501(c)(4) must serve a "community." Although an exact delineation of the boundaries of a "community" contemplated by section 501(c)(4) is not possible, the term as used in that section has traditionally been construed as having reference to a geographical unit bearing a reasonably recognizable relationship to an area ordinarily identified as a governmental subdivision or a unit or district thereof.

Rev. Rul. 74-99 goes on to set forth two additional criteria which a homeowners' association must satisfy in order to qualify for exemption under section 501(c)(4) of the Code: (1) it must not conduct activities directed to the exterior maintenance of private residences because this reinforces the "prima facie presumption that the organization is operated primarily for private benefit"; and (2) it owns and maintains only common areas or facilities such as roadways and parklands, sidewalks and street lights, access to or the use and enjoyment of which is extended to members of the general public and is not restricted to members of the homeowners' association.

In Rev. Rul. 80-63, 1980-1 C.B. 116, the Service provided guidance as to whether the conduct of certain activities will affect the exempt status under Code section 501(c)(4) of otherwise qualifying homeowners' associations. With regard to the issue of the definition of a "community", the Rev. Rul. states that:

Whether a particular homeowners' association meets the requirements of conferring benefit on a community must be determined according to the facts and circumstances of the individual case. Thus, although the area represented by an association may not be a community within the meaning of that term as contemplated by Rev. Rul. 74-99, if the association's activities benefit a community, it may still qualify for

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exemption. For instance, if the association owns and maintains common areas and facilities for the use and enjoyment of the general public as distinguished from areas and facilities whose use and enjoyment is controlled and restricted to members of the association then it may satisfy the requirement of serving a community.

In Lake Petersburg Association v. Commissioner, 33 CCH Tax Ct. Mem. 259 (1974), taxpayer, a nonprofit membership organization, argued that it qualified for exemption under section 501(c)(4) of the Code because it was created to stimulate the local economy and to make the area a better place to live. The organization was formed to construct a lake community in which it leased lots to members. The Tax Court concluded, based upon the evidence presented, that the organization was operated primarily for the benefit of its members rather than for the benefit of the entire community. The Court found that the organization "directly benefited only those people who were members and who therefore could enjoy the facilities and environment that the lake provided". Further, the Court concluded that any economic benefit to the local area was indirect and remote.

In Flat Top Lake Association, Inc. v. United States, 89-1 USTC ¶9180 (4th Cir. 1989), the Court of Appeals affirmed the District Court's opinion that a cooperative homeowners' association was not entitled to tax exempt status as a social welfare organization described in Code section 501(c)(4) because its activities did not benefit a "community". The association's activities were conducted solely for the benefit of property owners and their guests, and not the general public.

"Flat Top" was organized in 1950 as a nonprofit corporation by individuals who wished to develop an artificial lake in the area near Beckley, West Virginia. The articles of incorporation provided that the purposes of the Association included: "To own, control, lease and sell real estate; to build, maintain and operate a lake and other recreational facilities for the pleasure and convenience of its members without profit upon a cooperative basis...."

The Association acquired approximately 2,200 acres of land whereon it constructed a 230 acre artificial lake. The land surrounding the lake front was subdivided into lots and sold at \$1,000 a lot. Access to the property was provided by a two lane road constructed by the Association. The road is not a public highway and bears a sign at the entrance to the development

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[REDACTED]

stating, "Flat Top Lake Association, Private Property, Members Only."

The articles of incorporation and the bylaws provide that entry into the development property, and use of the lake or any of the other Association facilities is restricted to members and their guests. There are 375 lots owned by members. There are permanent structures on 240 of the lots and 80 families reside at Flat Top on a year round basis. The remaining members use their lots as recreational facilities.

There are no schools, churches or commercial establishments within the bounds of Flat Top lake property, nor is commercial development permitted by the Association bylaws. Although Flat Top has the requisite number of residents to incorporate as a class four municipality under West Virginia law, it has chosen to continue to operate under statutes applicable to private corporations. The Association has, however, undertaken certain tasks of a quasi-governmental nature. It has constructed a bridge within the development, maintains certain common areas including the road, a park and the lake itself, and provides waste disposal for residents. Finally, the association has arranged for some law enforcement by obtaining the appointment of a conservator of the peace, for whom it reimburses a local Sheriff's Department.

From 1952 to 1979, the Association was tax exempt under section 501(c)(4) and its predecessor as a social welfare organization. In 1979, however, the Service revoked the organization's exemption, retroactive to 1975, on the basis that it did not benefit a "community" bearing a "recognizable relationship to a governmental unit." Instead, the Association existed only for the private benefit of its members.

The Appeals Court cited Rev. Rul. 74-99, quoting the statement that the term "community", as contemplated in Code 501(c)(4), "has traditionally been construed as having reference to a geographical unit bearing a reasonably recognizable relationship to an area ordinarily identified as a governmental subdivision or a unit or district thereof."

The Court concluded that:

The determination of a "community" for section 501(c)(4) purposes will generally turn on the facts and circumstances of the individual case. See Rev. Rul. 80-63, 1980-1 C.B. 166. Nevertheless, the guiding focus must remain upon whether the would-be

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community is an active part of society or a private refuge for those who would live apart. In the instant case, Flat Top Lake Association has obviously done all within its power to create a wholly private environment for its members. It is not a community within the contemplation of section 501(c)(4) and cannot claim a tax exemption for benefitting itself.

With respect to your own application under section 501(c)(4) of the Code, the evidence in the administrative file clearly indicates that you come within the holding of the Flat Top Lake case, discussed above. There are only twelve landowners who belong to your Association, and, apparently, little prospect of many more members. There is no indicia that you are a true "community" within the guidelines set forth in Rev. Rul. 74-99, 1974-1 C.B. 131 and the Flat Top Lake case. The limited number of member-landowners and the relatively small size of your subdivision is strong indication that you do not resemble a "geographical unit bearing a reasonably recognizable relationship to an area ordinarily identified as a governmental subdivision or a unit or district thereof", quoting Rev. Rul. 74-99.

We are cognizant that Rev. Rul. 80-163 states that, as contemplated by Rev. Rul. 74-99 for purposes of section 501(c)(4), the term "community" does not embrace a minimum area or a certain number of homeowners. Nevertheless, we cannot ignore the very limited number of member-landowners who benefit from your operations. Further, Rev. Rul. 80-163 makes clear that among the most important facts and circumstances utilized by the Service to determine whether a particular homeowners' association confers a community benefit is "if the association owns and maintains common areas and facilities for the use and enjoyment of the general public as distinguished from areas and facilities whose use and enjoyment is controlled and restricted to members of the association." In this regard, we note that the only property that you control is a small airstrip which abuts your members' property and a small road which runs parallel and also abuts the individual lots of members. In contrast, the organization described in the Flat Top Lake case controlled much more land and common property (aside from its much larger membership) and thus more closely resembled a governmental unit.

Concerning your airstrip, all the evidence points to the conclusion that it is operated for the private benefit of your members. It is not connected to any airport and is not listed on any air charts. It is used by your member-landowners and their guests "about 90% of the time" and may be used by community

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organizations, such as the Air National Guard, only for specified operations and with your permission. This intent to essentially limit use of the airstrip to your members is further evidenced by your articles, which state as a purpose "to acquire, maintain, and operate a private airstrip for the use of the members of the Association".

In summary, you do not meet any of the tests for a true "community" within the meaning of Rev. Rul. 74-99 and the Flat Top Lake decision. Instead, you are primarily operated to benefit your member-landowners, who constitute a very limited group of individuals, with little or no benefit to surrounding communities or the general public. This pervasive private benefit means that you are not organized or operated to promote the common good and general welfare of the people of the community, as required of a social welfare organization described in section 501(c)(4). See section 1.501(c)(4)-1(a)(2)(i) of the regulations.

Based on the foregoing, we hold that you do not qualify for exemption from federal income tax under section 501(c)(4) of the Code. Accordingly, you are required to file federal income tax returns on Form 1120.

You have the right to protest this ruling if you believe it is incorrect. To protest, you should submit a statement of your views, with a full explanation of your reasoning. This statement, signed by one of your officers, must be submitted within 30 days from the date of this letter. You also have a right to a conference in this office after your statement is submitted. You must request the conference, if you want one, when you file your protest statement. If you are to be represented by someone who is not one of your officers, that person will need to file a proper power of attorney and otherwise qualify under our Conference and Practice Procedures.

If we do not hear from you within 30 days, this ruling will become final and copies will be forwarded to your key District Director, Ohio (Cincinnati), which is your key district for exempt organization matters. Thereafter, if you have any questions about your federal income tax status, including questions concerning reporting requirements, please contact your key District Director.

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Date July 7, 1997

[REDACTED] Homeowners Association [REDACTED]

When sending a protest or other correspondence with respect to this case, you will expedite its receipt by using the following address on the envelop:

Internal Revenue Service

[REDACTED] NW

Sincerely,

[REDACTED]

Chief, Exempt Organizations

[REDACTED]

cc:

[REDACTED]

Code	Initiator	Reviewer	Reviewer	Reviewer	Reviewer	Reviewer	Reviewer
Surname	[REDACTED]	[REDACTED]					
Date	5/21/97	5-22-97					